



222 Delaware Avenue, Suite 1200
Wilmington, DE 19801-1611 U.S.A.
(302) 300-3434
Fax (302) 300-3456

www.btlaw.com

Shawn P. Tucker
Partner
302-300-3470
shawn.tucker@btlaw.com

November 18, 2024

The Honorable Shawn M. Garvin, Secretary
Delaware Department of Natural
Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Re: *Emergency Temporary Variance Petition – Winchelsea Subdivision*

Dear Secretary Garvin,

Pursuant to Title 7, Section 6012 of the Delaware Code, the Applicant, Winchelsea LLC (“Winchelsea”) respectfully petitions the Delaware Department of Natural Resources and Environmental Control (“DNREC”) for a temporary emergency variance to operate the existing four (4) manholes at the Winchelsea Subdivision and 443 LF of 8” sewer pipe to store the wastewater as a way of temporarily providing domestic sanitary service for 10 residential units of housing.

1. Background Facts

The Winchelsea Subdivision was approved by New Castle County and recorded on May 24, 2023 per Instrument # 20230524-0033206. The subdivision consists of 336 dwelling units to be serviced by New Castle County and connected to the sanitary sewer in Jamison Corner Road. Winchelsea was not the owner of the property when it was originally approved, but purchased it subsequently to its original approval from another home builder. Unfortunately, it was only recently discovered during an off-site utility location survey that the previously approved County sewer plans could not be fully implemented due to an off-site sewer conflict. Furthermore, the off-site sewer conflict was not known by the civil engineer who prepared the original sewer plans because the conflict had not been documented in the County’s available records as is the normal practice routinely relied upon by civil engineers. New Castle County does not dispute this fact, and, in fact, it was this recognition that resulted in New Castle County’s support for our client’s pump and haul application pending with DNREC today. This fact can be directly confirmed with Eric Laramore, P.E., New Castle County Public Works Department (eric.laramore@newcastlede.gov or (302)-395-5741). While the County has worked with our client on a “work around” for the off-site sewer conflict, unfortunately, there is insufficient time for all such required new field work to be fully completed prior to Thanksgiving. Therefore, our client is requesting permission for a temporary pump and haul permit in order to provide sanitary

sewer service for no more than ten (10) homes. This current situation has reached a critical level for our client. Indeed, currently, one buyer is living in a hotel awaiting to settle upon his home, and nine (9) more pre-Thanksgiving closings were originally agreed upon by our client in direct reliance upon the approved record plan and originally approved sewer plan approval from the County.

2. Compliance With Applicable Temporary Emergency Variance Requirements

a. Severe Hardship

Here, numerous home buyers would suffer significant family hardship if this petition is not granted because they had reasonably expected to settle upon their homes prior to Thanksgiving. Indeed, multiple families are scheduled for real estate closings for these residential units within the next week and certificates of occupancy cannot be granted without the availability of sanitary sewer service.

b. Unforeseeable Event

Second, as discussed above, this emergency situation was the direct result of an unforeseeable off-site sewer conflict which was not discovered during the normal and customary sewer design process and approval. It was only discovered during utility location efforts in the field which were conducted to install the original off-site sewer connection. Therefore, the connection location had to be revised, which involved the process of submitting amended plans for reapproval, and additional field work which is ongoing.

c. Compliance With Regular Variance Elements

Further, this petition meets the conditions of 7 Del. C. § 6011(b)(1)-(4) which require evidence that:

- 1) Good faith efforts have been made to comply with this chapter;
- 2) The person applying is unable to comply with this chapter because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time or the financial cost of compliance by using available technology is disproportionately high with respect to the benefits which continued operation would bestow on the lives, health, safety and welfare of the occupants of this State and the effects of the variance would not substantially and adversely affect the policy and purposes of this chapter;
- 3) Any available alternative operating procedure or interim control measures are being or will be used to reduce the impact of such source on the lives, health, safety and/or welfare of the occupants of this State; and
- 4) The continued operation of such source is necessary to national security or to the lives, health, safety or welfare of the occupants of this State.

(i) Good Faith Efforts

Winchelsea has demonstrated good faith efforts to comply with applicable laws. If time was not of the essence, Winchelsea would comply with each 7 Del. C. § 6011 (regular variance) element, rather than those laid out in § 6012 (temporary emergency variance). Further, at no time does Winchelsea intend to operate the temporary holding tank without DNREC's approval or longer than is absolutely necessary. Furthermore, when it just last week discovered the prior owner failed to obtain a Wastewater Facilities Construction (“WPCC”) permit from the State, Winchelsea immediately applied for this permit with DNREC.

(ii) Alternative Technology or Alternative Methods of Control

This element is not as relevant to this petition as is might be to other petitions. Because time is of the essence, other methods of control are not available since the public sewer connection cannot currently be made. In addition, a correctly installed and maintained temporary holding tank will have no environmental impact if the requested variance is granted by Your Honor. The new sewer line work triggered by the off-site conflict is ongoing, and the final public sewer connection is reasonably expected to be completed no later than December 20, 2024. All efforts possible to expedite this work remain ongoing. Furthermore, the wastewater will not impact the soil due to the impermeable nature of the existing manholes and connections, and the temporary system will be used for this purpose for an extremely short duration (approximately one month).

(iii) Available Alternative Operating Procedure or Interim Control Measures

Winchelsea will certainly fully cooperate with DNREC to use all available alternative operating procedures or interim control measures to reduce the impact of the holding tank system on the community at all times. In fact, Winchelsea has contracted with A-1 Sanitation Services, Inc. (“A-1”) to pump wastewater out of the holding tank system when ever the system becomes three-quarters full such that the system does not overflow and adversely affect the community. In addition, the system is equipped with an alarm system to notify A-1 in the event of any emergency overflow situation.

(iv) Necessary to Health, Safety, or Welfare

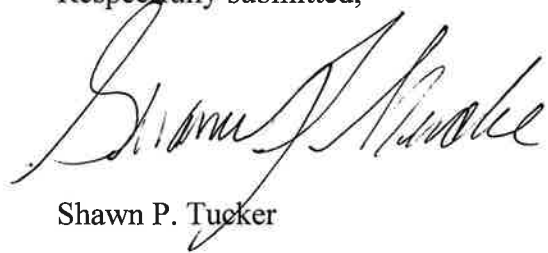
The immediate operation of the holding tank system is necessary to the health, safety, and welfare of up to ten (10) families. If this variance is not granted, these families will not be able to settle upon and occupy their new homes prior to Thanksgiving as was originally contemplated in good faith reliance upon the original County approved record plan and County approved sewer plans.

Public Notice

Winchelsea is also mindful of Delaware's policy of providing the public with notice of the granting of a temporary emergency variance.¹ However, because this temporary holding tank system will not adversely affect any Delaware residents, Winchelsea does not expect any negative reactions from the public. Therefore, Winchelsea will take all steps necessary to ensure the publication of the emergency variance after it is granted by Your Honor.

Please do not hesitate to contact me with any additional questions or concerns at shawn.tucker@btlaw.com or my cell at any time - (302) 545-8416.

Respectfully submitted,



Shawn P. Tucker

cc: Eric Laramore, P.E., (via electronic mail: eric.laramore@newcastlede.gov)

¹ 7 DEL. C. § 6012(d) (“The granting of any temporary emergency variance shall be published within 5 days of the granting of said variance.”).